

### **REMARKS/ARGUMENTS**

The office action of December 28, 2007 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 1-21 and 31 remain in this application.

#### **Rejections under 35 U.S.C. § 112, second paragraph**

Claims 7-10 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants have amended claims 7 and 8 to provide antecedence for the claim features requiring the same identified in the action. Accordingly, withdrawal of this rejection is respectfully requested. Also, applicants have amended certain of the claims to be in preferred form.

#### **Rejections under 35 U.S.C. § 102**

Claims 1-3, 5, 6, 8-13, 15-21 and 31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent no. 5,279,796 to Parker et al. ("Parker"). Applicants respectfully traverse this rejection.

The action alleges that Parker discloses all the features of independent claim 1. To show the second portion serving as a reservoir for fluid as previously claimed the action points to washing chamber 16.

As amended, claim 1 recites that the second portion serves as a reservoir for receiving an amount of fluid *corresponding to a fluid sample from the closed fluid carrier*. According to Parker at col. 6, lines 24-26, an external "source of vacuum 130 is connected to the needle inlet connector 82 for causing fluid to be withdrawn through needle 18." Significantly, Parker does not teach or suggest that the aspirating needle cartridge assembly 10 includes a reservoir for receiving an amount of fluid *corresponding to a fluid sample from the closed fluid carrier*. That is, the fluid withdrawn from the vial 63 merely passes through the cartridge assembly 10 and out the needle inlet connector 82 to the source of vacuum 130, which is not part of the cartridge assembly 10. Significantly, there is no suggestion that the washing chamber 16 serves as a

reservoir for receiving an amount of fluid *corresponding to a fluid sample from the closed fluid carrier*. Logically, the washing chamber 16 stores washing fluid as opposed to sampling fluid.

For at least the foregoing reasons, independent claim 1 is patentably distinct from Parker. Claims 2, 3, 5, 6, and 8-11, which depend from claim 1, are patentably distinct from Parker for the same reasons as claim 1, and further in view of the novel and non-obvious features recited therein. For example, claim 2 recites the feature that the second portion comprises a disposable molded reservoir having a capacity sufficient for containing at least one sample volume of fluid from the closed fluid carrier, which is neither taught nor suggested by Parker. Also, claim 5 recites that the disposable reservoir is joined to the first portion by a UV cured adhesive joint. To show the claim 5 features, the action points to col. 4, lines 61-68 and col. 5, lines 1-60. However, the cited portion of Parker merely describes that the retaining clip 96 retains the upper support or top 14 in a non-slidable, fixed relationship relative to the lower support or base 12. Parker is wholly devoid of a teaching or suggestion of any adhesive joint, much less a UV cured adhesive joint as claimed.

Independent claim 12 calls for, among other features, a second portion serving as a reservoir for receiving an amount of fluid corresponding to a fluid sample from the pierced closed fluid carrier. Thus, for the same reasons set forth above with respect to claim 1, claim 12 and claims 13 and 31, which depend from claim 12, are patentably distinct from Parker.

Independent claim 15 is directed to a method of sampling a fluid from a closed fluid carrier using a probe including, among other features, a first portion for piercing the closed fluid carrier, and a second portion serving as a reservoir for receiving a fluid from the closed fluid carrier. The method includes, among other steps, forming a fluid flow path between the fluid of the closed fluid carrier and the second portion of the probe, aspirating a volume of the fluid of the closed fluid carrier along the fluid flow path, and retaining the volume of fluid of the closed fluid carrier within the second portion of the probe upon withdrawal of the probe from the closed fluid carrier. As substantially discussed with respect to claim 1 Parker does not teach or suggest a second portion serving as a reservoir for receiving a fluid from the closed fluid carrier, and the steps of forming a fluid flow path *between the fluid of the closed fluid carrier and the second portion of the probe*, aspirating a volume of the fluid of the closed fluid carrier along the fluid

flow path, and *retaining the volume of fluid of the closed fluid carrier within the second portion of the probe* upon withdrawal of the probe from the closed fluid carrier as recited in claim 15. In Parker the fluid withdrawn from the vial 63 merely passes through the cartridge assembly 10 and out the needle inlet connector 82 to the source of vacuum 130, which is not part of the cartridge assembly 10. Significantly, there is no suggestion that the washing chamber 16 performs *retaining the volume of fluid of the closed fluid carrier* as claimed. Indeed, there is no suggestion in Parker that the washing chamber 16 stores anything other than washing fluid.

For at least the foregoing reasons, independent claim 15 is patentably distinct from Parker. Claims 16-21, which depend from claim 15, are patentably distinct from Parker for the same reasons as claim 1, and further in view of the novel and non-obvious features recited therein.

#### **Rejections under 35 U.S.C. § 103**

Claims 4 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Parker in view of U.S. patent no. 6,740,063 to Lynn. Applicants respectfully traverse this rejection.

Claims 4 and 14 ultimately depend from claims 1 and 12, respectively. Notwithstanding whether the combination of Parker and Lynn is proper, Lynn does not overcome the deficiencies of Parker noted above with respect to claims 1 and 12. For at least this reason, the combination of Parker and Lynn does not result in the inventions recited in claims 4 and 14.

**CONCLUSION**

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,  
BANNER & WITCOFF, LTD.

Dated: June 24, 2008

By: /Gary D. Fedorochko/  
Gary D. Fedorochko  
Registration No. 35,509

1100 13<sup>th</sup> Street, N.W., Suite 1200  
Washington, D.C. 20005-4051  
Tel: (202) 824-3000  
Fax: (202) 824-3001

GDF:lab